

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Guidelines for Evaluating)
the Environmental Effects of)
Radiofrequency Radiation)

ET Docket No. 93-62

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION/CLARIFICATION

U S WEST, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Rule 1.429,¹ hereby files its Petition for Reconsideration/Clarification ("Petition") of the Commission's Report and Order in the above-captioned proceeding.²

I. **THE COMMISSION SHOULD RECONSIDER ITS DECISION
AND ADOPT AN UNADULTERATED 1992 ANSI STANDARD**³

U S WEST was very disappointed that the Commission chose to disregard the overwhelming preponderance of the evidence in this proceeding supporting the adoption of the 1992 ANSI standard. As recently as June of this year, U S WEST

¹ 47 CFR § 1.429.

² In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93-62, Report and Order, FCC 96-326, rel. Aug. 1, 1996 ("Report and Order" or "Order").

³ This standard is more formally referred to as the American National Standards Institute ("ANSI") and Institute of Electrical and Electronics Engineers ("IEEE") C95.1-1992.

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urged the Commission to adopt the ANSI standard, unadulterated, in light of the broad support for such standard as well as the sound consensus model utilized in its development.⁴

The Commission's final decision, to adopt a sort of hybrid standard based on the guidelines recommended by the National Council on Radiation Protection and Measurement ("NCRP") for the frequencies from 300 KHz to 100 MHz and the 1992 ANSI standard, was erroneous both as a matter of law and of policy.

That decision ignored not only highly credible evidence proffered by academic radiofrequency ("RF") experts such as Dr. Arthur W. Guy, Dr. Eleanor Adair, and Dr. C. K. Chou, but also persuasive evidence submitted by a broad range of industry constituents. It also ignored the initial endorsement of the 1992 ANSI standard by several governmental agencies (such as the Food and Drug Administration ("FDA"), the Occupational Safety and Health Organization ("OSHA"), the Department of Defense ("DOD"), and the Department of Energy ("DOE")).⁵

The 1992 ANSI standard represents the most current, broadly endorsed, consensus of the scientific community on RF safety issues. Furthermore, its recognition by other federal agencies and its consistency with modern global standards between 300 KHz and 300 GHz are strong endorsements of its fundamental propriety.

⁴ Letter to William F. Caton, Acting Secretary, Federal Communications Commission, from Elridge A. Stafford, Executive Director, Federal Regulatory, U S WEST, dated June 3, 1996 ("Stafford Letter").

⁵ *Id.* at 2, citing to Supplement to Reply Comments of the National Association of Broadcasters ("NAB"), filed herein Feb. 26, 1996, at 4, n.9, 6.

In the end, it appears the Commission made a decision to ignore science in favor of some type of other accommodation. Such a decision was contrary to the mandates of fundamental fairness and due process. It was also contrary to the public interest.

U S WEST would be gratified were the Commission to reverse its position during the reconsideration process and adopt the 1992 ANSI standard as the sole standard. However, prudence requires that it not rely on such a hope or expectation. Thus, for the remainder of this Petition, U S WEST addresses specific items the Commission should reconsider or clarify such that its existing Order can at least be implemented with a minimum of contention, confusion, and burden.

II. THE COMMISSION SHOULD REVISE ITS TRANSITION PERIOD

The Commission's timetable for compliance with the Report and Order is unrealistic for many carriers. It is predictable that there will be a substantial onslaught of waivers in late December to accommodate the inability of many carriers to comply with the requirements by January. Therefore, the January 1, 1997, effective date for compliance should be extended.

The Commission established an effective date of January 1, 1997, for carriers and applicants to comply with its new RF guidelines, with the *proviso* that companies may file waivers for up to one year from the adoption of the Report and Order for additional time to come into compliance with the new guidelines.⁶ As the

⁶ Report and Order ¶ 112.

Commission acknowledges, “applicants may need to undertake significant analysis and study in order to comply with the new guidelines.”⁷ Furthermore, the Commission anticipates that sometime “in the near future” detailed information would be provided to interested parties, in a revised version of OST Bulletin No. 65, to facilitate compliance with the Commission’s mandates.

Even assuming the OST Bulletin can be revised and made available within the current month, the remaining three-month transition period would provide insufficient time for established carriers to analyze their compliance obligations, adopt new procedures, and verify and certify that their installed transmitters (numbering more than 1,100 stations in the case of U S WEST NewVector Group, Inc. d/b/a U S WEST Cellular d/b/a AirTouch Cellular) are in compliance. Furthermore, if the Commission’s recently promulgated rules are not changed and continue to hold established carriers liable for non-compliance of recently arrived carriers on site, a large percentage of sites will require time-consuming field measurement as part of the certification process. Thus, it is predictable that U S WEST, like many other carriers, would find itself in non-compliance with the Commission’s new regulations.

The number of waivers which will undoubtedly be submitted will certainly strain the Commission’s already limited resources. The Commission should

⁷ Id. ¶ 114.

reconsider the effective date of the Order and revise it to give carriers a year-long transition period, dating from the release of the revised OST Bulletin.⁸

III. LIABILITY FOR NONCOMPLIANCE AT MULTI-TRANSMITTER SITES SHOULD BE BORNE BY THOSE CAUSING THE NONCOMPLIANCE

Newly adopted Section 1.1307(b)(3) prescribes liability obligations that generally impose “collective” responsibility for every licensee using a site. That rule mandates that, within any “accessible area” on which multiple fixed transmitters are situated, responsibility for correcting any emission exceeding RF exposure limits attaches to every licensee whose transmitter (unless categorically excluded) contributes field strengths or power density limits exceeding one percent of the exposure limits applicable to that licensee’s transmitter or facility.⁹ The Commission should reconsider this “collective liability” approach.

It is clear that compliance with the above obligation will require further definition, perhaps through the OST Bulletin, of terms such as “accessible area” and “facility” and clarification of how a threshold of any given percentage is to be measured. But, beyond resolving such ambiguities, the Commission should reconsider the fundamentals of Section 1.1307(b)(3) itself. That rule creates clear disincentives with respect to incumbent Commercial Mobile Radio Service (“CMRS”)

⁸ Id. ¶ 111 (compare position of NAB arguing for an effective date of “one year after adoption of [the] revised rules”).

⁹ Id. at Appendix C: Final Rules.

licensees and collocation arrangements, arrangements that generally benefit the public interest and are considered beneficial by governmental entities.

Rather than create disincentives to collocation, the Commission should create incentives. It should, for example, require that licensees already using a site in compliance with RF limitations are entitled to be held harmless for the costs of preventing or remedying maximum permissible exposure (“MPE”) violations resulting from a newcomer’s operations. The only RF exposure liability an incumbent licensee should bear *vis-à-vis* a newcomer should be that which the incumbent voluntarily assumes as a party to contractual negotiations. Such a rule advances the public interest to a far greater degree than that adopted by the Commission.

Many long-established cellular transmitters operate under zoning authority granted before the public interest in collocation requirements was generally recognized. Licensees operating such facilities, even on leased rooftop areas, usually have the latitude to decline proposed collocation on or immediately adjacent to their facilities.

As wireless carriers nationwide prepare for competitive market entry, both carriers and local governments are coming to recognize the valid public interest in requiring collocation of transmitters on common facilities or areas whenever feasible. Localities increasingly are requiring acceptance of collocation arrangements as a condition of zoning authority.

The Commission's newly proposed Section 1.1307(b)(3) would result in depression of a carrier's own business interest in pursuing collocation. It would also penalize a carrier mandated by a local government to pursue collocation, a theoretical public good.

The Commission should revise its rule such that carriers have incentives to maximize collocation opportunities, not craft rules that depress carrier motivations to engage in such arrangements. Section 1.1307(b)(3) should be revised to exempt any incumbent which has satisfactory documentation of compliance from the obligation to subsidize the compliance obligations of other site users. Furthermore, any incumbent already complying with RF exposure standards should be entitled to expect newcomers to hold it harmless and bear the cost of preventing or remedying whatever excessive RF emissions their operations would cause.

IV. COLLOCATION AT PREVIOUSLY LICENSED FACILITIES SHOULD NOT ALTER ORIGINAL RF OBLIGATIONS

Addressing the question of grandfathering previously licensed stations, the Commission concludes that licensees will "continue to operate their facilities in compliance with [the RF] limits" which applied at the time of licensure.¹⁰ This provision assures licensees a measure of predictability of license conditions for the duration of the license term.

¹⁰ Id. at ¶ 119.

The Commission did not yet address, however, what rules apply to a grandfathered facility if other carriers should collocate there. Under Section 1.1307(b), as amended in this proceeding, a grandfathered facility automatically would become subject to the new RF exposure limits provided in Section 1.1310 under a number of circumstances, including “applications . . . for . . . equipment authorizations or modifications in existing facilities.”¹¹

A previously licensed station operator which agrees to collocation should be prepared to forego grandfathered RF status in the course of applying for any necessary equipment modification. However, Section 1.1307(b) makes no distinction between voluntary and involuntary collocation. For example, if the collocation is mandated by a local government, the licensee loses grandfathered status in the process. This rule should be reconsidered and revised to assure that the grandfathered RF status the Commission has recognized in paragraph 119 of the Report and Order is not eliminated.

V. REMOVAL OF THE CATEGORICAL EXCLUSION FOR LOW-POWER DEVICES HAS NO SCIENTIFIC BASIS

The Commission has determined that it should eliminate the previous categorical exclusion for low-power devices operating at or under 7 watts of transmit power.¹² There is no scientific basis to support such a change. U S WEST, therefore, urges the Commission to reinstate this exclusion.

¹¹ Id. at Appendix C: Final Rules.

¹² Id. ¶¶ 62-74.

VI. CONCLUSION

Because the 1992 ANSI standard was endorsed so overwhelmingly by the parties to this proceeding, was the result of a broad consensus process, and is so fundamentally grounded in scientific evidence, it should be the standard of choice for the Commission. The Commission should reconsider its decision not to adopt it as the sole standard with respect to RF exposure limits.

Assuming the Commission declines to reconsider its fundamental decision, the Commission should change its timeline for compliance with its recently promulgated rules. It is predictable that the timeline will not be met by a number of carriers, driving parties and the Commission into an unnecessary and labor-consumptive waiver regime.

The Commission should also reverse its “collective liability” approach in those cases where entities are collocated on transmitters, as the proposed approach creates disincentives to collocation at the precise time when carriers are increasingly being urged to view collocation as a public interest solution to transmitter proliferation.

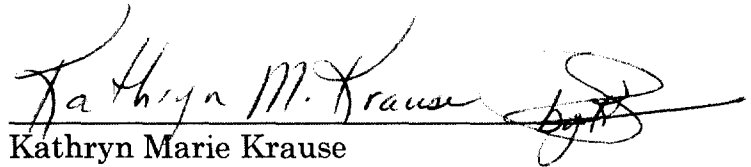
Finally, the Commission should clarify the matter of grandfathered RF status

and should reinstate the categorical exclusion for low-power devices previously a component of the Commission's RF policies and rules.

Respectfully submitted,

U S WEST, INC.

By:

A handwritten signature in cursive script, appearing to read "Kathryn M. Krause", followed by a large, stylized flourish or initial.

Kathryn Marie Krause
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2859

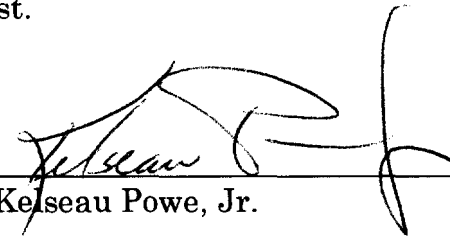
Its Attorney

Of Counsel,
Dan L. Poole

September 6, 1996

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 6th day of September, 1996, I have caused a copy of the foregoing **PETITION FOR RECONSIDERATION/CLARIFICATION** to be served via hand-delivery upon the persons listed on the attached service list.



Kelseau Powe, Jr.

James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

Michele Farquhar
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

David Wye
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

Jackie Chorney
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, DC 20554

Rosalind K. Allen
Federal Communications Commission
Room 7002
2025 M Street, N.W.
Washington, DC 20554

David L. Furth
Federal Communications Commission
Room 7002
2025 M Street, N.W.
Washington, DC 20554

Richard M. Smith
Federal Communications Commission
Room 412
2000 M Street, N.W.
Washington, DC 20036

Robert F. Cleveland, Jr.
Federal Communications Commission
Room 266
2000 M Street, N.W.
Washington, DC 20036

Lauren J. Belvin
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

David R. Siddall
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

Suzanne Toller
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

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